

File No.: S4-35173  
WR Doc ID: 4496557

# State of Washington REPORT OF EXAMINATION FOR WATER RIGHT APPLICATION

**PRIORITY DATE**

April 7, 2008

**WATER RIGHT NUMBER**

S4-35173

**MAILING ADDRESS**

ICICLE CHAPTER OF TROUT UNLIMITED

12780 PROWELL RD

LEAVENWORTH WA 98826

**SITE ADDRESS (IF DIFFERENT)****Quantity Authorized for Withdrawal or Diversion****WITHDRAWAL OR DIVERSION RATE**

1 cfs

**ANNUAL QUANTITY (AC-FT/YR)**

485.1

**Purpose**

PURPOSE	WITHDRAWAL OR DIVERSION RATE			ANNUAL QUANTITY (AC-FT/YR)		PERIOD OF USE (mm/dd)
	ADDITIVE	NON-ADDITIVE	UNITS	ADDITIVE	NON-ADDITIVE	
Fish propagation						March 1 thru October 31

IRRIGATED ACRES		PUBLIC WATER SYSTEM INFORMATION	
ADDITIVE	NON-ADDITIVE	WATER SYSTEM ID	CONNECTIONS
0	0		

**Source Location**

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
Chelan	Wenatchee River	Columbia River	45-Chelan

SOURCE FACILITY/DEVICE	PARCEL	WELL TAG	TWP	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
Wenatchee River	241712320000		24N	17E	12	NWSW		

**LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE**

1980 feet north and 1110 feet east from the SW corner of Section 12 being within the NW¼SW¼ of Section 12, T. 24 N., R. 17 E.W.M., being within Chelan County, Washington.

**PARCELS**

241712320000

**LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE**

The NW¼SW¼ of Section 12, T. 24 N., R. 17 E.W.M., being within Chelan County, Washington.

**Proposed Works**

To divert water from the Wenatchee River into a pond for the purpose of fish habitat and rearing.

**Development Schedule****BEGIN PROJECT****COMPLETE PROJECT****PUT WATER TO FULL USE**

January 1, 2015



## Measurement of Water Use

How often must water use be measured?	Monthly
How often must water use data be reported to Ecology?	Annually (Jan 31)
What volume should be reported?	Total Annual Volume
What rate should be reported?	Annual Peak Rate of Withdrawal (gpm or cfs)

## Provisions

### Measurements, Monitoring, Metering and Reporting

An approved measuring device shall be installed and maintained for each of the sources identified by this water right in accordance with the rule "Requirements for Measuring and Reporting Water Use", WAC 173-173.

Recorded water use data shall be submitted via the Internet. To set up an Internet reporting account, contact the Central Regional Office. If you do not have Internet access, you can still submit hard copies by contacting the Central Regional Office for forms to submit your water use data.

WAC 173-173 describes the requirements for data accuracy, device installation and operation, and information reporting. It also allows a water user to petition the Department of Ecology for modifications to some of the requirements.

### Department of Fish and Wildlife Requirement(s)

The water diverted into the side channel shall be reduced to 1% of the flow of the Wenatchee River when the flow is less than 100cfs at a point within 100 feet upstream of the authorized point of diversion.

### Water Use Efficiency

The water right holder is required to maintain efficient water delivery systems and use of up-to-date water conservation practices consistent with RCW 90.03.005.

### Proof of Appropriation

The water right holder shall file the notice of Proof of Appropriation of water (under which the Certificate of Water Right is issued) when the permanent distribution system has been constructed and the quantity of water required by the project has been put to full beneficial use. The Certificate will reflect the extent of the project perfected within the limitations of the permit. Elements of a proof inspection may include, as appropriate, the source(s), system instantaneous capacity, beneficial use(s), annual quantity, place of use, and satisfaction of provisions.

### Schedule and Inspections

Department of Ecology personnel, upon presentation of proper credentials, shall have access at reasonable times, to the project location, and to inspect at reasonable times, records of water use, wells, diversions, measuring devices and associated distribution systems for compliance with water law.

### Findings of Facts

Upon reviewing the investigator's report, I find all facts, relevant and material to the subject application, have been thoroughly investigated. Furthermore, I concur with the investigator that water is available from the source in question; that there will be no impairment of existing rights; that the purpose(s) of use are beneficial; and that there will be no detriment to the public interest.



Therefore, I ORDER approval of Application No. S4-35173, subject to existing rights and the provisions specified above.

#### Your Right To Appeal

You have a right to appeal this Order to the Pollution Control Hearings Board (PCHB) within 30 days of the date of receipt of this Order. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do the following within 30 days of the date of receipt of the Order.

File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.

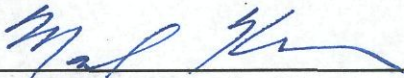
- Serve a copy of your appeal and this Order on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.
- You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

Street Addresses	Mailing Addresses
<b>Department of Ecology</b> Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	<b>Department of Ecology</b> Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
<b>Pollution Control Hearings Board</b> 1111 Israel RD SW Ste 301 Tumwater, WA 98501	<b>Pollution Control Hearings Board</b> PO Box 40903 Olympia, WA 98504-0903

For additional information visit the Environmental Hearings Office Website: <http://www.eho.wa.gov>.

To find laws and agency rules visit the Washington State Legislature Website: <http://www1.leg.wa.gov/CodeReviser>.

Signed at Yakima, Washington, this 13 day of November 2013.

  
Mark Kemner, LHG, Section Manager  
Water Resources Program/CRO

If you need this document in an alternate format, please call the Water Resources Program at 509-575-2490. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call 877-833-6341.



## INVESTIGATOR'S REPORT

Application for Water Right – S4-35173

Eric Hartwig, Department of Ecology

### BACKGROUND

This report serves as the written findings of fact concerning Water Right Application Number S4-35173.

#### Project Description

On April 7, 2008, Icicle Chapter of Trout Unlimited of Leavenworth, Washington, filed Application No. S4-35173 with Washington State Department of Ecology (Ecology) to appropriate water for the Wenatchee River a tributary to the Columbia River. The application proposes to divert water from the Wenatchee River into a pond for the purpose of fish rearing and youth fishing. The applicant worked closely with the Yakama Nation, Colville Confederated Tribes, NOAA Fisheries Chelan County, City of Leavenworth and the Washington Department of Fish and Wildlife (WDFW).

The proposed point of diversion is located 1980 feet north and 1110 feet east from the SW corner of Section 12 being within the NW¼SW¼ of Section 12, T. 24 N., R. 17 E.W.M., being within Chelan County Parcel No. 241712320000 in WRIA 45. The water will return to the Wenatchee River approximately 600 ft downstream.

#### Priority Processing

This application is being priority processed because it qualified under the criteria under which an application may be processed prior to competing applications (WAC 173-152):

- The proposed water use is non-consumptive and if approved would substantially enhance or protect the quality of the natural environment.

**Table 1 Summary of Requested Water Right**

<b>Applicant Name:</b>	Icicle Chapter of Trout Unlimited
<b>Date of Application:</b>	April 7, 2008
<b>Place of Use</b>	The NW¼SW¼ of Section 12, T. 24 N., R. 17 E.W.M., being within Chelan County, Washington, Chelan Count Parcel 241712320000.

County	Water body	Tributary To	WRIA
Chelan	Wenatchee River	Columbia River	45-Wenatchee

Purpose	Rate	Unit	Acre-feet/yr	Begin Season	End Season
Fish propagation	1	CFS	485.1	03/01	10/31

Source Name	Parcel	Twp	Rng	Sec	QQ Q	Latitude	Longitude
Wenatchee River	241712320000	24N	17E	12	NWSW		

#### Legal Requirements for Approval of Appropriation of Water

RCWs 90.03 and 90.44 authorize the appropriation of public water for beneficial use and describes the process for obtaining water rights. Laws governing the water right permitting process are contained in RCW 90.03.250 through 90.03.340 and RCW 90.44.050. In accordance with RCW 90.03.290,



determinations must be made on the following four criteria in order for an application for water rights to be approved:

- Water must be available.
- There must be no impairment of existing rights.
- The water use must be beneficial.
- The water use must not be detrimental to the public interest.

This report serves as the written findings of fact concerning all things investigated regarding Water Right Application Number S4-35173.

### ***Public Notice***

RCW 90.03.280 requires that notice of a water right application be published once a week, for two consecutive weeks, in a newspaper of general circulation in the county or counties where the water is to be diverted and used. Notice of this application was published in the Wenatchee World on May 30, and June 6, 2008.

### ***Consultation with the Washington Department of Fish and Wildlife***

The Department must give notice to the Washington Department of Fish and Wildlife (WDFW) of applications to divert, withdraw or store water. Jeff Korth of the WDFW submitted a letter of support and recommendations for this project on December 9, 2008. The letter recommends that when the river flow at the proposed point of diversion falls below 100 cfs that the diversion should be reduced to 1% of the flow of the river.

### ***State Environmental Policy Act (SEPA)***

A water right application is subject to a SEPA threshold determination (i.e., an evaluation whether there are likely to be significant adverse environmental impacts) if any one of the following conditions are met:

- (a) It is a surface water right application for more than 1 cubic-foot per second (cfs), unless that project is for agricultural irrigation, in which case the threshold is increased to 50 cfs, so long as that irrigation project will not receive public subsidies;
- (b) It is a groundwater right application for more than 2,250 gallons per minute (gpm);
- (c) It is an application that, in combination with other water right applications for the same project, collectively exceed the amounts above;
- (d) It is a part of a larger proposal that is subject to SEPA for other reasons (e.g., the need to obtain other permits that are not exempt from SEPA);
- (e) It is part of a series of exempt actions that, together, trigger the need to do a threshold determination, as defined under WAC 197-11-305.

*This application is categorically exempt from SEPA as it will not divert more than 1 cfs for non-irrigation purposes.*



## **INVESTIGATION**

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### **Site Visits**

A site visit was conducted on July 8, 2010 by Eric Hartwig of the Ecology. The site visit included inspection of the proposed point of diversion, and proposed place of use.

### **Research**

In consideration of this application, Ecology reviewed available documents pertaining to the application's site conditions.

The use of water for fish acclimation and fishing pond habitat is considered non-consumptive to the source. The project reduces the flow in a 600-foot portion of the Wenatchee River by 1 cfs between the pond intake and the outfall structures during operation from March 1 to October 31.

By rule (WAC 173-545-060(10)), the project is considered consumptive with respect to the bypass portion of the river and is subject to specific instream for the bypassed reach; otherwise, the flows established by rule under WAC 173-545-060(7) apply to the bypass reach.

A letter for consultation to set an instream flow for the bypass reach was sent to;

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<u>Person</u>	<u>Organization</u>
Jerry Marco	Colville Confederated Tribes
Tom Scribner	Yakima Nations
Dave Carie	US fish and Wildlife Service
Kristine Petersen	NOAA Fisheries
Jeff Korth	WDFW
Shaun Seaman	Chelan County PUD

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The organizations submitted letters in response in arrogance with the WDFW finding that the 1 cfs could be diverted as long as the stream flow was 100 cfs or greater and if less than 100 cfs then 1% of the flow.



## Other Rights Appurtenant to the Place of Use

The property that the pond is proposed to be located is within the service area of the City of Leavenworth.

### ***Consideration of Protests and Comments***

In response to public notice of this application, the Department of Ecology received no letters of protest.

## Four Statutory Tests Conclusions

The conclusions based on the above investigation are as follow:

### ***Beneficial Use***

In accordance with RCW 90.54.020(1), the proposed water use is for fish and wildlife maintenance and enhancement is a beneficial use. Based on the quantities available under the proposed project, quantities requested are reasonable and beneficial.

### ***Availability***

Based on the collective information summarized above for this report and subject to the limitations herein, water is found to be available.

### ***Impairment of Other Water Rights***

With the proposed limitations placed upon this permit, impairment of other rights will not occur.

### ***Public Welfare***

Based on the need to provide to enhance the habitat for juvenile fish within the Wenatchee River basin and consultation with the Yakama Nation and the Washington Department of Fish and Wildlife, the water use will not be detrimental to the public welfare.

## Conclusions

- Water is physically available at the quantities sufficient to meet project demand.
- RCW 90.54.020 recognizes fish and wildlife maintenance and enhancement as beneficial uses of water.
- Approval of the proposed appropriation will not result in impairment of existing water rights.
- Approval of the proposed appropriation is not detrimental to the public interest.

## **RECOMMENDATIONS**

Based on the above investigation and conclusions, I recommend that this request for a water right be approved in the amounts and within the limitations listed below and subject to the provisions listed above

### **Purpose of Use and Authorized Quantities**

The amount of water recommended is a maximum limit and the water user may only use that amount of water within the specified limit that is reasonable and beneficial:

*1 cfs when stream flows are 100 cfs or greater at the point of diversion or 1% of the flow when the stream flow is less than 100cfs.*

### **Place of Use**

The NW¼SW¼ of Section 12, T. 24 N., R. 17 E.W.M., being within Chelan County, Washington, Chelan Count Parcel 241712320000

### **Point of Diversion**

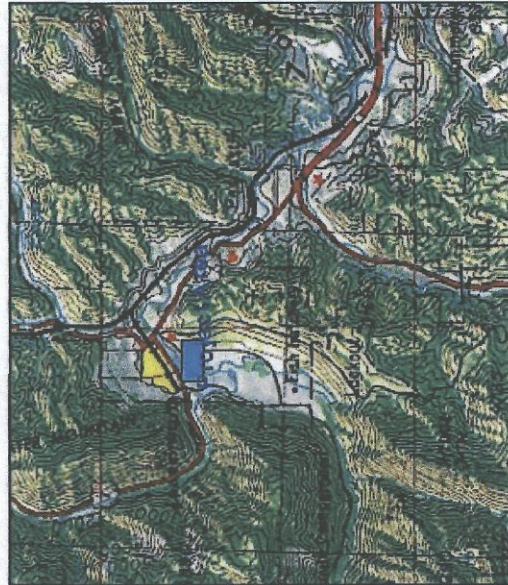
1980 feet north and 1110 feet east from the SW corner of Section 12 being within the NW¼SW¼ of Section 12, T. 24 N., R. 17 E.W.M., being within Chelan County, Washington

  
Eric Hartwig, Report Writer



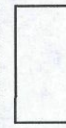
11-13-13  
Date



# Attachment 1



## Legend

-  Place of use
-  township\_2000
-  sections\_2000

